IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 401 OF 2005

Smt. Sanjeevanee G. Javheri & Ors. ..Appellants

versus

Sou. Suman P. Javheri & Ors. ..Respondents

Mr. Umesh Mankapure i/b. R. V. More for the Appellants.

None for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 25TH AUGUST, 2005

P.C. :

1. Heard advocate for the appellants. Nobody is present for the respondents.

2. The suit for partition came to be filed by one Suman against eight respondents. Counsel for the appellants has given a certified copy of the plaint. The genealogical tree is as Narayan and Laxmi were husband and wife. Narayan died in 1993 and Laxmi died on 1982. Both of them had four sons and two daughters Gopal, Dyaneshwar, Arun, Govind, Suman and Vijaya. These appellants are children of

Govind i.e. Sanjeevani - the daughter. Case of the plaintiffs was that this property belonged to their mother Laxmibai and therefore the plaintiffs claimed partition in the residential house or dwelling house. In that Defendant Nos. 1, 2 and 3 made a counter claim claiming 1/6th share in the property. Suit of the plaintiffs was dismissed and the counter claim was allowed.

3. Matter was taken to the appellate court by the present appellants. Appeal was dismissed. Therefore, this Second Appeal.

4. Advocate for the Appellants contended that when the suit was filed by the plaintiffs for a limited relief, the defendants had no right to claim partition of the entire property and the counter claim on that ground should have been rejected. I do not find any legal force in the submissions.

5. If the parties all the legal heirs of Narayan and Laxmi were on record then nothing prevented the defendant Nos. 1, 2 and 3 from claiming partition of the property, that is the only property dwelling house.

6. Second contention of the counsel for the appellants is that the plaintiffs have failed to

prove that the property was of Laxmibai. Even if it is accepted for the sake of argument that the plaintiffs have failed in that regard then the property was owned by Narayan is admitted by the appellants. And if Narayan died in 1993 then after his death under the Hindu Succession Act, it will go to the first legal heirs who were six in number and therefore entitled to 1/6th share.

7. Counsel for the appellants contended that appellants have 1/4th share in the property. There is absolutely no legal force. There is no merit in this appeal the same is dismissed.

25.8.2005 (D.G. DESHPANDE, J.)